Ordinance have been re-enacted in the new Singapore Improvement Ordinance, Cap. 259 of the 1955 Edition of the Laws of the Colony of Singapore and re-numbered section 61(1), section 62(1) and section 62(8) respectively.

The rebuilding scheme of the appellant is not only in accordance with the General Improvement Plan but it has also been incorporated in the General Improvement Plan which, as I have said, is a statutory plan of town planning in Singapore. In my view the new building which the appellant proposes to erect is a town improvement within the meaning of section 15(1)(k).

I am therefore of the opinion that the demolition of these 10 shophouses is necessary in the interest of town improvement.

Mr. Lee has raised another point. He submits that the words "the Court is satisfied" appearing in section 15(1)(k) give the District Judge a discretion whether to give possession to the landlord or not and that such discretion is absolute. I need only say that in my opinion the District Judge has no discretion to exercise under section 15(1)(k).

The appeal is therefore allowed with costs.

Appeal allowed.

Solicitors: *L. Rayner*; *Lee & Lee.*

Re Election Petition of CHEAH SENG TEIK

[O.C.J. (Rigby J.) February 26, 1958]

[Penang — Election Petition No. 2 of 1957]

Local Authority — Election — Objection to nomination on ground of language disability — Procedure — Election Offences Ordinance, 1954, ss.14(b), 32, 34 and 35 — Local Authorities Elections Regulations, 1951, reg.25 — Constitution of the Butterworth Town Council, s.14(b).

This was an election petition presented by the petitioner, Cheah Seng Teik, who was a candidate duly nominated by the Alliance Party to contest the Butterworth Town Council Elections. The petitioner and one Mrs. Oon Beng Hong, a Labour Party nominee, were the sole contestants for the election in respect of the Northern Ward. After the Returning Officer had declared that the nominations were closed, Mrs. Oon presented a written objection to the petitioner's nomination on the ground that he had not the necessary linguistic qualification in either the English or Malay language. The Returning Officer read out the objection and then proceeded to test the validity of it by examining the petitioner "searchingly in speaking and reading and writing both English and Malay languages." After these tests had been completed the Returning Officer announced that it was not open to Mrs. Oon to object to the petitioner's nomination on language grounds and he accordingly overruled her objection; but as a result of his examination of the petitioner he was fully satisfied that the petitioner had not that degree of language proficiency required to qualify himself for election as a candidate, and he then rejected the petitioner's nomination.

Held: (1) the ruling of the Returning Officer as to Mrs. Oon's objection was perfectly correct;

(2) under the express provisions of regulation 25(3) of the Local Authorities Elections Regulations, 1951, the Returning Officer was fully entitled to raise this objection himself.

Observations on section 32 of the Election Ordinance, 1954.

ELECTION PETITION.

O. L. Phipps for the petitioner.

H. S. Ong (Legal Adviser) for the Returning Officer.

Cur. Adv. Vult.

Rigby J.: — This is an Election Petition presented by one, Cheah Seng Teik, who was a candidate, duly nominated by the Alliance Party, to contest the Butterworth Town Council Elections in respect of the Northern Ward. The election was held on the 5th November, 1957.

It would appear from the petition that the petitioner and one Mrs. Oon Beng Hong, nominated on behalf of the Province Wellesley Labour Party, were the sole contestants for election in respect of the Northern Ward.

After the Returning Officer had declared that the nominations were closed and that objections to nominations could be lodged within the next half hour, the said Mrs. Oon Beng Hong presented a written objection to the Returning Officer against the petitioner on the ground that he was not able to speak and read and write the English or Malay language with a degree of proficiency sufficient to enable him to take an active part in any proceedings as a Town Councillor — an essential prerequisite for qualification to election as a Town Councillor in accordance with section 14(b) of the written Constitution of the Butterworth Town Council as provided by Legal Notification No.112 contained in the Supplement to the Federation of Malaya Government Gazette (Penang Section) dated the 9th April, 1953.

According to the Petition, the Returning Officer "read out the objection and proceeded to test the validity thereof by examining the petitioner searchingly in speaking and reading and writing both English and Malay languages for nearly an hour."

In a subsequent paragraph in the Petition it is said, however, that after the

Returning Officer had tested the petitioner in the English language he requested one Inche Hashim bin Itam to test the petitioner in the Malay language.

However, after these tests had been completed it would appear from the Petition that the Returning Officer then announced that it was not open to Mrs. Oon Beng Hong to object to the petitioner's nomination on language grounds and he accordingly overruled her objection. Pausing here for a moment, the grounds on which objection may be taken to a nomination paper are contained in Regulation 25(1) of the Local Authorities Elections Regulations, 1951 (Gazette (Penang Section) Notification No. 103 dated the 16th May, 1951), and it is apparent that an objection on language grounds is not one of those grounds. The Returning Officer's ruling was, therefore, perfectly correct.

Regulation 25(3), however, provides:—

"25. (3) Every objection shall be in writing signed by the objector and shall specify the ground of objection. The Returning Officer may himself lodge an objection not only on any of the grounds set out in paragraph (1) of this Regulation but also on the ground that the candidate is not qualified to be, or not capable of being, elected a Councillor in accordance with the provisions of the Constitution."

Having rejected Mrs. Oon Beng Hong's objection it would appear — and I quote from the Petition itself — that the Returning Officer then stated:—

"He had authority to object on such ground and in consequence thereof he rejected your petitioner's nomination and then declared the said Mrs. Oon Beng Hong returned unopposed as Councillor for Northern Ward for three years."

The petitioner concludes his Petition with a prayer that it may be determined that the said Mrs. Oon Beng Hong was not duly elected or returned and that the election was void.

The petitioner bases his Petition on two grounds, one of law and one of fact. As a matter of law he submits that the whole proceedings were irregular and *ultra vires*, since although it may have been open to the Returning Officer himself to lodge an objection (which the petitioner does not admit), such objection, in accordance with Regulation 25(3), to which I have referred, should have been in writing signed by the objector, and specifying the grounds of objection.

It is further contended on behalf of the petitioner that the Returning Officer founded his decision on a test which had been concluded on Mrs. Oon Beng Hong's original invalid objection, which test was prior to the fresh objection of the Returning Officer, and it is said that even assuming that the Returning Officer was entitled of his own motion to enter an objection, then he should have conducted a new test arising out of his own objection as to the language qualification of the petitioner.

On the facts it is submitted, on the strength of the petitioner's own affidavit, that he had attained a sufficient degree of proficiency of both the English and Malay languages to enable him to take an active part in any local form of Council activities. There is a further supporting affidavit from his former Headmaster at the Chung Ling High School as to the standard of his educational qualification in the English language.

An affidavit in answer to the Petition has been filed by the Returning Officer, Mr. V. C. Bennett. Paragraphs 4, 5 and 9 of that affidavit are as follows:—

4. In regard to the test, I say that I personally tested the petitioner in English, which was the language the petitioner elected to be tested in, and I was satisfied that the petitioner did not fulfil the requirements of section 14(b) of the Constitution of the Butterworth Town Council.

5. I decided to ascertain his knowledge of Malay with the aid of the Chief Clerk of the Rural District Council North, Inche Hashim bin Itam. I was present throughout the said test, which in view of paragraph 4 hereof, was strictly not required, and we were both satisfied that he had a bare speaking knowledge of Malay. I was however not satisfied that this knowledge was of the standard required under section 14(b) of the Constitution of the Butterworth Town Council.

9. I may add that when the said test was being conducted by me, all candidates and their election agents were present and no objection was made by any one as to the manner in which I conducted the test.

Two further affidavits were filed on behalf of the petitioner. In the first affidavit, a Mr Govindasamy alleged that — and I quote from the affidavit itself:—

"After the Malay language test before Inche Hashim bin Itam.....I heard the said Inche Hashim remark to the Returning Officer that the examination was satisfactory."

The truth of this allegation was specifically denied in paragraph 8 of the Returning Officer's affidavit. In the second affidavit, a Mr. Phee Joo Teik, the election agent for the petitioner, alleged — and, again, I quote from the affidavit itself —

"Some time in the afternoon of the same day (the day of the holding of the election) I happened to meet the said Inche Hashim.....and he intimated to me that he personally had been satisfied with the answers of the petitioner when he had tested him but that his was not the deciding opinion in the matter."

Inche Hashim bin Itam was, in fact, called

as a witness by the petitioner. He stated that he was the Chief Clerk of the Rural District Council, Butterworth and that on the 5th November, 1957, he was called into the room by the Returning Officer and asked by him to carry on an ordinary simple conversation with the petitioner. The Returning Officer remained present. The witness stated — and I quote from his evidence:—

"I think he (the petitioner) could carry on an ordinary simple conversation in Malay."

The witness said that he had attended Rural District Council meetings on many occasions and that they were carried on mostly in Malay. I then asked him the specific question:—

"*Q.* As a result of your examination of him, was it your opinion that he could sufficiently understand and take part in an ordinary District Council meeting conducted in Malay?"

He replied:—

"*A.* I do not think he could understand fully a discussion of a Rural District Council meeting in Malay. He could not understand it adequately."

With reference to the allegation that subsequent to the test that same day he had expressed the opinion that he personally had been satisfied with the answers of the petitioner when he had tested him, he said that some persons had come to his house that same night and asked him his views as to his conversation with the petitioner and that he had told them that he was not competent to judge, because he had only been asked to converse with the petitioner and that he then told them what he thought, to wit, that the petitioner could speak "very simple Malay."

Section 34 of the Election Offences Ordinance sets out the persons who may present an election petition and section 35 specifies the relief which may be claimed, including, *inter alia*, "a declaration that the election is void" and/or "a declaration that the person was not duly elected or ought not to have been returned."

Section 32 specifies the five grounds on, or under, which an election may be declared to be void by the Election Judge on an election petition. Grounds 32(a), (c) and (d) deal with corrupt practices, bribery, treating, etc. and are irrelevant for consideration. Ground (c) provides that the election of a candidate shall be declared void if it be proved that the candidate was "at the time of his election a person disqualified for election." Again, in my view, this subsection is irrelevant and of no assistance to the petitioner since it deals only with the position of an *elected* candidate — not a candidate for election who has been unsuccessful — in respect of whom it is subsequently proved that at the time of his election he was, for one reason or another, disqualified for election. The classes of persons automatically disqualified from election to the Butterworth Town Council are set out in section 15 of the written Constitution.

The only remaining subsection available to the petitioner for the purposes of this Petition is 32(b). That subsection provides that the election of a candidate may be declared void on an election petition for "non-compliance with the provisions of any written law relating to any election, if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election."

It is to be noted that mere non-compliance with the provisions of such written law is not by itself, sufficient to avoid the election, the non-compliance must have affected the result of the election.

Turning again to the facts of this case. Mrs. Oon Beng Hong had presented a written objection to the petitioner's nomination on the ground that he had not the necessary linguistic qualification in either the English or Malay language. The Returning Officer read out that objection and according to the statement of the Petition itself, then proceeded to test the validity of it by examining the petitioner "searchingly in speaking and reading and writing both English and Malay languages for nearly an hour." The Returning Officer presumably then realised that the objection raised by Mrs. Oon Beng Hong was not one she was entitled to make under Regulation 25(1) of the Local Authorities Elections Regulations, 1951. Quite properly, therefore, he overruled her objection. But as a result of his examination of the petitioner in the English and Malay languages he was by that time presumably fully satisfied that the petitioner had not that degree of language proficiency required to qualify himself for election as a candidate. Consequently he then himself adopted the objection that had already been raised by Mrs. Oon Beng Hong. It seems to me perfectly clear that under the express provisions of Regulation 25(3) of the Local Authorities Elections Regulations, 1951, which I have already quoted, he was fully entitled to raise this objection. Indeed, in my view, having regard to the fact that allegation had been specifically brought to his notice that the petitioner had not the required language qualification, it might most reasonably be contended that he would have been failing in his duty if he

had not given effect to that possible defect in the qualification of a candidate for election by himself raising the objection. It would, indeed, have been a farce if a candidate had been elected to the Council who had not a sufficient knowledge of either the English or Malay language to understand and take his full share in the proceedings in the Council. It might have been argued that since the Returning Officer had himself raised the objection, on the principle that no man should be a Judge in his own cause, it would have been better for him to have adjourned the matter to enable some other person or body of persons to determine the validity of his objection. But, again, that argument is not open to the petitioner having regard to the express wording of Regulation 25(4) which specifically provides that where there has been an election "the Returning Officer shall *forthwith* proceed to decide on the validity of every objection and, if the objection is allowed, to state the grounds of his decision."

It may well be that his objection should have been in writing. But on a full consideration of the affidavits before me and the evidence adduced I am wholly satisfied that such non-compliance with the provision of the written law did not affect the result of the Petition in that on the evidence before me I am fully satisfied that the petitioner had not that degree of proficiency in the English or Malay language to qualify him for election as a Town Councillor in accordance with the provisions of Regulation 14(b). The Returning Officer, according to the evidence before me, had himself been a former Secretary of the Rural District Council, the meetings of which were conducted both in English and Malay, but mainly Malay. According to the evidence of Inche Hashim bin Itam, the Returning Officer spoke fluent Malay. Indeed, it is difficult to imagine how he could have satisfactorily carried out his duties as Secretary of the Council if he had not done so. The Returning Officer was, therefore, most eminently suitable to judge whether the petitioner had a sufficient degree of proficiency in either English or Malay to take an active part in the proceedings of the Town Council. His view as to the petitioner's insufficient knowledge of Malay for the purpose of taking an active part in Council proceedings conducted in Malay is, indeed, corroborated by the sworn testimony of Inche Hashim bin Itam, to which I have already referred.

For these reasons I have no hesitation in dismissing this Petition.

As I have already said, on the wording of section 32 of the Election Offences Ordinance, 1954, in my view the only ground on which the petitioner could have brought this Petition was on the basis of ground (b), that there had been a non-compliance with the provisions of the written law relating to an election and that such non-compliance had affected the result of the Petition. Again, as I have already said, I am wholly satisfied that the non-compliance of the Returning Officer to put his objection in writing did not affect the result of this Petition. But considering for a moment a variation of the facts of this case, it is a matter of interesting speculation as to what the remedy of a candidate would be if there had, in fact, been a compliance with the written law — and a written objection had been duly lodged by the Returning Officer — and the Returning Officer had then proceeded wrongly to disqualify a candidate who was, in fact, proved to have the necessary qualification in either the English or Malay language. What remedy would be open to such a wrongfully disqualified candidate? I venture to express the opinion that there would be no remedy open to him by way of an election petition under this Ordinance and that his sole remedy, if any, would be by way of invoking the high prerogative jurisdiction of the Supreme Court for the issue of a writ of *certiorari*. Fortunately, however, the matter is not one that I am called upon to decide.

For the reasons I have stated the Petition must be dismissed with costs.

In conclusion, I would express my indebtedness to Mr. Phipps and to the State Legal Adviser, Mr. Ong, for the benefit of their arguments before me.

By consent of both parties, costs fixed in the inclusive amount of $275.

Petition dismissed.

Solicitors: *Hogan, Adams & Allan.*

A. CHANDRASEGARAM v. THE PRIME MINISTER OF THE FEDERATION OF MALAYA

[O.C.J. (Sutherland J.) December 9, 1957]

[K.L. — Originating Motion No. 7 of 1957]

Pension — Whether there is right to — Retrenchment and reinstatement — Non-service period treated as leave without salary "for the purpose of providing continuity of service" — Purpose of — Mandamus for recomputation of pension.